

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Telephone Number Portability )

DOCKET FILE COPY ORIGINAL

CC Docket No. 95-116

RM 8535

**NYNEX OPPOSITION AND COMMENTS**

**I. INTRODUCTION**

The NYNEX Telephone Companies<sup>1</sup> ("NYNEX") submit this Opposition and Comments directed to certain parties' petitions for reconsideration and/or clarification filed August 26, 1996, in the above-captioned matter. These filings relate to the Commission's First Report and Order released July 2, 1996 ("Order" or "Number Portability Order").

**II. THE COMMISSION SHOULD TAKE ACTION ON RECONSIDERATION AND CLARIFICATION TO ENSURE SMOOTH AND FAIR IMPLEMENTATION OF LONG-TERM NUMBER PORTABILITY**

**A. Query On Release ("QOR")**

NYNEX's Petition For Reconsideration And Clarification has demonstrated that the Commission should permit QOR on an intra-network basis to facilitate the timely,

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<sup>1</sup> New England Telephone and Telegraph Company and New York Telephone Company.

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effective and efficient implementation of the Commission's mandate of long-term number portability. Other parties' petitions substantially support this position.<sup>2</sup>

**B. Deployment Schedule**

Several parties recommend that the Commission accelerate all or parts of the number portability deployment schedule.<sup>3</sup>

This recommendation is inappropriate. The existing deployment schedule is very ambitious and will be difficult to meet.<sup>4</sup> NYNEX will take all reasonable steps in its power to meet the schedule. However, many factors that will impact implementation are beyond NYNEX's control. These factors relate to switch vendors, the North American Numbering Council ('NANC'),<sup>5</sup> Regional Databases and the Illinois Field test.<sup>6</sup> If anything, the Commission should consider relaxing the schedule somewhat as suggested by several parties.<sup>7</sup> An alternative the Commission should consider is to adjust the schedule to reflect: whether the NANC timely accomplishes its responsibilities with regard to the regional databases and associated details;<sup>8</sup> and whether there is timely

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<sup>2</sup> See Bell Atlantic, BellSouth, GTE, Pacific, SBC, USTA, U S WEST.

<sup>3</sup> ACS 7-12 and Attachment A, KMC Telecom, NextLink 5-7.

<sup>4</sup> See NYNEX ii, 7-11.

<sup>5</sup> NYNEX commends the Commission for recently establishing, announcing the membership of, and setting the first meeting date (October 1, 1996) for the NANC. See Public Notice, DA 96-1495 (released September 5, 1996); Public Notice, DA 96-1516 (released September 10, 1996).

<sup>6</sup> See NYNEX 7-12.

<sup>7</sup> See BellSouth 10-14, GTE 3-10, SBC 10-11, U S WEST 1-12.

<sup>8</sup> For example, the NANC must select administrators for the regional databases, design the details for operation of the system and ensure the databases are set up. If the NANC focused on nothing else from its initial meeting on October 1, 1996, it might be able to complete this activity in time for the beginning of the deployment schedule.

delivery of final switch vendor capabilities.<sup>9</sup> The Commission should also consider moving a smaller Metropolitan Statistical Area (“MSA”) for each Tier 1 LEC to the beginning of the schedule, in place of larger MSAs.<sup>10</sup>

### C. N-1 Network

Pacific requests clarification of the Order so as to include intermediate networks in the implementation schedule. Specifically, Pacific recommends that the N-1 (next to last) networks be required to make available query capabilities for number portability in parallel with the scheduled deployment of number portability in the 100 largest MSAs.<sup>11</sup>

NYNEX supports this approach. In its Order, the Commission discussed this approach in detail without making it an explicit requirement.<sup>12</sup> The three major interexchange carriers (“IXCs”) -- AT&T, MCI and Sprint -- had previously concurred with this approach. Requiring this capability to be implemented in, and utilized by the N-1 networks will reduce the stress on the terminating LECs’ signaling infrastructure since otherwise those LECs would need to perform the database query. Reducing this stress will create the same kind of benefits as QOR.<sup>13</sup>

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<sup>9</sup> “Glitches” are often found in the working of vendor software, especially in the most complex marketplaces where this software will be initially deployed. These glitches later require patches, *i.e.*, rework, to make the software function properly. These patches can take several months at a minimum to complete.

<sup>10</sup> This approach would be similar to the method usually used to introduce new capabilities into the public switched network. A carrier will conduct a trial in a smaller marketplace first to test technical and operational concerns before deploying the capability on a wide scale.

<sup>11</sup> Pacific 12-14.

<sup>12</sup> Order ¶¶ 42-44, 62.

<sup>13</sup> See NYNEX 4-6. If the Commission chooses not to require this N-1 network capability, then the Commission should confirm the right of terminating LECs to

#### **D. Interim Number Portability (“INP”)**

The Commission has adopted cost recovery principles with respect to currently available or transitional number portability measures (i.e., INP).<sup>14</sup> The Commission provides that “states may apportion the incremental costs of currently available measures among relevant carriers by using competitively neutral allocators, such as gross telecommunications revenues, number of lines, or number of active telephone numbers.”<sup>15</sup> Departing from its usual reliance on cost causation principles, the Commission indicates that a competitively neutral cost recovery mechanism should: first, not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber (“the incremental payment by the new entrant if it wins a customer would have to be close to zero ...”); and, second, not have a disparate effect on the ability of competing service providers to earn normal returns on their investment.<sup>16</sup>

Several parties have requested reconsideration or clarification of these INP cost recovery standards.<sup>17</sup> In support of such parties’ petitions, NYNEX urges the

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charge N-1 carriers for performing the query, where the N-1 carrier is either unwilling or unable to perform the query itself. Accordingly, AirTouch’s proposal (pp. 2, 10) that a carrier be able to rely on the terminating LEC for this capability is unacceptable absent the LEC’s ability to so charge and to receive notice that the N-1 carrier will be sending calls not yet queried for number portability. Furthermore, CMRS providers seeking to delay implementation of the ability to query calls to ported numbers should be aware that database query charges will continue until those providers establish and query their own databases.

<sup>14</sup> Order ¶¶ 121-140.

<sup>15</sup> Order ¶ 130.

<sup>16</sup> Order ¶¶ 132-135.

<sup>17</sup> See, e.g., Bell Atlantic 11-14, BellSouth 2, 4-10, CBT 2-4, GTE 11-16, SBC 3-6.

Commission not to apply those cost recovery standards, but to defer to interconnection agreements and State commission regulation of INP offerings.<sup>18</sup>

The cost recovery standard in Section 251(e)(2) of the Communications Act should be interpreted as applying to long-term number portability, not to already established INP measures. INP is a Section 271 checklist item subject to the interconnection negotiation process.<sup>19</sup>

Moreover, the Commission standards improperly favor new entrants and will prevent incumbent LECs from recovering their costs.<sup>20</sup> FCC denial of carriers' reasonable opportunity to recover costs of INP would raise a serious question as to the unlawful taking of private property for public use without just compensation,<sup>21</sup> and set an

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<sup>18</sup> In State jurisdictions where proceedings to determine the most appropriate INP cost recovery mechanism are not completed, NYNEX believes that existing tariffs and the negotiated INP arrangements of interconnection agreements should be allowed to stand. See, e.g., BellSouth 3-4 (pointing out that the FCC should not abrogate interconnection agreements). As Bell Atlantic points out (p. 12 & n. 18), the Commission should not preempt State regulation of intrastate services in this area. See Section 2(b) of Communications Act.

<sup>19</sup> See, e.g., SBC 2-5.

<sup>20</sup> See, e.g., Bell Atlantic 13-14. The Commission states that its standards are essentially met by, for example, the formula voluntarily being used by carriers in Rochester, NY, and adopted by the NY DPS in the New York metropolitan area. Order ¶ 136 & notes 381-382. However, the Commission fails to recognize that NYNEX was allowed to keep the terminating access revenues in that scenario. Additionally, while NYNEX's experience is that such formula does not allow NYNEX to fully recover its costs, this example only illustrates that State commissions are exercising their jurisdiction in this area, and the Commission should let those State processes go forward undisturbed.

<sup>21</sup> See Fifth Amendment to U.S. Constitution; Dolan v. City of Tigard, 114 S. Ct. 2309 (1994); Duguesne Light Co. v. Barasch, 488 U.S. 299 (1989); FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944).

improper precedent for the recovery of permanent number portability costs that will be much greater.

Furthermore, NYNEX opposes AirTouch's request (pp. 16-18) to disallow the use of revenues as an allocator for INP costs. As discussed in response to the Commission's Further NPRM in this docket on cost recovery for long-term number portability, NYNEX believes that total telecommunications retail revenues would be the best allocator.<sup>22</sup>

In addition, ACS's request (pp. 5-7) for retroactive application of the Commission's INP cost recovery standards is completely inappropriate and should be rejected. The Commission has appropriately provided for prospective application of its standards,<sup>23</sup> and any retroactive application would unduly disrupt State tariffs and/or interconnection agreements.

Finally, with respect to interexchange calls terminated to an INP ported number, the Order establishes an "overarching principle" that both LECs should share the terminating access charges; and the Order states that "meet-point billing arrangements between neighboring incumbent LECs provide the appropriate model for the proper access billing arrangements for interim number portability."<sup>24</sup> Such an arrangement would be appropriate in the context of an overall interconnection arrangement which provided for the full and fair recovery of costs. NYNEX also supports GTE's position (pp. 18-21) that the Commission should not require LECs to provide detail for every call

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<sup>22</sup> See NYNEX Comments filed August 16, 1996; NYNEX Reply Comments filed September 16, 1996.

<sup>23</sup> See Order, Appendix B, 52 C.F.R. Sections 52.7, 52.9.

<sup>24</sup> Order ¶ 140.

in order to implement meet-point billing of terminating access to ported numbers. The costs for the changes necessary for billing systems to implement Commission's meet-point billing requirement are simply not justified for number portability measures that are merely interim in nature, to be superseded by the scheduled deployment of long-term number portability. The Commission's overarching concept is reasonable in the right context, but NYNEX would propose being able to negotiate appropriate billing arrangements with other carriers, perhaps utilizing a PIU-type factor.

#### **E. Portability For 500 And 900 Numbers**

The Commission has concluded that LECs would be obligated to offer number portability for their own 500 and 900 numbers to the extent technically feasible.<sup>25</sup> However, NYNEX supports those petitioners that point out that Section 251(b)(2) of the Communications Act should not be read to require number portability for non-geographic numbers such as 500 and 900.<sup>26</sup> 500 and 900 number portability is clearly not necessary to foster local competition. However, if the Commission imposes a requirement for 500 and 900 number portability, then that requirement should not apply only to LECs, but should also apply to other telecommunications carriers such as IXC.<sup>27</sup> In this way, the customers' ability to port numbers would be maximized, and customer confusion would be reduced. For example, if IXCs are not required to provide portability, then a customer will not be able to switch his or her number from one IXC to any other carrier, IXC or

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<sup>25</sup> Order ¶ 198.

<sup>26</sup> SBC 6-10, USTA 11-13.

<sup>27</sup> See BellSouth 24-25, SBC 7, USTA 12-14.

not, that may offer less costly and/or higher quality service. Under the Commission's current decision, the customer would be able to port his or her number only if a LEC currently provides service or the LEC will be providing new 500 and/or 900 service.<sup>28</sup>

### III. CONCLUSION

The Commission should deny those parties' petitions for reconsideration and/or clarification that would impose more onerous or competitively disparate number portability requirements. NYNEX supports those petitions that will facilitate smooth and fair implementation of the Commission's Number Portability Order.

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<sup>28</sup> The Commission's experience in developing 800 number portability indicates the importance of involving all participants in the telecommunications industry to make any portability approach a success.



**CERTIFICATE OF SERVICE**

I, Yvonne Kuchler, hereby certify that copies of the foregoing NYNEX  
OPPOSITION AND COMMENTS in CC Docket No. 95-116 were served on the parties  
listed on the attached service list, this 30th day of September, 1996, by first class United  
States mail, postage prepaid, or by hand where noted.

  
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